

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK ANDREW ZAVALA, AE8159,)	
)	
Petitioner,)	No. C 15-2247 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
MARTIN BITER, Warden,)	(Dkt. #2)
)	
Respondent.)	

Petitioner Mark Andrew Zavala, a state prisoner incarcerated at Kern Valley State Prison, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Santa Clara County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Following a jury trial, petitioner and co-defendants Scott Alan Hensley and Jonathan David Rodriguez were convicted of three counts of robbery, and petitioner and Hensley also were convicted of assault with a firearm. For all of the crimes of which defendants were convicted, the jury found true criminal street gang allegations. As to the three counts of robbery, the jury found true that petitioner had personally and intentionally discharged a firearm and that both Hensley and Rodriguez were principals in the offense and at least one principal personally and intentionally discharged a firearm. The jury also found true that petitioner had personally used a firearm in the commission of the assault.

Hensley admitted a prior conviction within the meaning of California's three strikes law, a prior serious felony conviction and two prior prison term allegations. Rodriguez admitted a prior prison term allegation.

On April 26, 2010, the trial court sentenced petitioner to a total prison term of 33 years, Hensley to a total prison term of 31 years and Rodriguez to a total prison term of 22 years.

Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on February 11, 2014 denied review of a petition allegedly raising the same claims raised here. On October 6, 2014, the Supreme Court of the United States denied certiorari review.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

B. Claims

Petitioner seeks federal habeas corpus relief by raising several claims, including juror misconduct, instructional error, prejudicial denial of motion to bifurcate trial and denial of right to confront witnesses. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (dkt. #2) is
GRANTED.

2. The clerk shall serve a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within 60 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within 30 days of his receipt of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, petitioner must serve and file an opposition or statement of non-opposition not more than 28 days after the motion is served and filed, and respondent must serve and file a reply to an opposition not more than 14 days after the opposition is served and filed.

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1 5. Petitioner is reminded that all communications with the court must
2 be served on respondent by mailing a true copy of the document to respondent's
3 counsel. Petitioner must also keep the court and all parties informed of any
4 change of address.

5 SO ORDERED.

6 DATED: July 2, 2015



CHARLES R. BREYER
United States District Judge